U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: APR 29 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

ON BEHALF OF APPLICANT: [redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on April 2, 1964, in Nogales, Sonora, Mexico. The record indicates that the applicant's father, [redacted] (Mr. [redacted], was born in Phoenix, Arizona on August 26, 1928, and that he was a United States (U.S.) citizen. Mr [redacted] died in Tucson, Arizona on April 11, 1994. The record indicates that the applicant's mother, [redacted] (Mrs. [redacted] was born in Torreon, Mexico on January 10, 1934. She is not a U.S. citizen. The applicant's parents married on April 17, 1969 in Nogales, Arizona. The record indicates that the applicant was admitted to the United States on March 27, 1990. The applicant seeks a certificate of citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his father.

The district director determined that, based on the evidence in the record, the applicant failed to establish that his United States citizen father was physically present in the United States or its outlying possessions for a period of 10 years prior to the applicant's birth, at least 5 of which were after August 26, 1942, when his father reached the age of 14. The district director stated:

> [Your] family claimed your father had resided in the United States all his life when his death was registered. The documentary evidence you have submitted, however, fails to establish this.
>
> Other documentation submitted relating to your father's alleged presence in the United States covers years 1965 to 1974, all after your birth, and have no bearing on your claimed acquisition of citizenship through your father.

See District Director Decision, dated May 19, 1997.

On appeal, the applicant, through counsel, asserts that

> The evidence submitted, the applicant's father's birth certificate, and other documentary evidence, demonstrated that the applicant did satisfy the law's requirements to obtain U.S. citizenship via his father. The applicant shall brief the issue [within] his written appeal.

See Notice of Appeal dated June 24, 1997. In his notice of appeal, counsel requested 90 days to submit a brief and

additional evidence to the AAO. No additional documents were received by the AAO.

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal,* 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted). Absent discrepancies in the evidence, where a claim of derivative citizenship has reasonable support, it will not be rejected. *See Murphy v. INS,* 54 F.3d 605 (9th Cir. 1995).

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). In order to derive citizenship pursuant to section 301(g) of the former Act, it must be established that when the child was born, the U.S. citizen parent was physically present in the U.S. or its outlying possession for 10 years, at least 5 of which were after the age of 14. *See § 301(a)(7) of the former Act.*

The definition of "physical presence" was addressed by the Board of Immigration Appeals (BIA) in *Matter of V,* 9 I&N Dec. 558 (BIA 1962). In determining that the term "physical presence" set forth in section 301(a)(7) of the former Act meant "continuous physical presence" in the United States, the BIA stated:

> We must look to the Congressional committee reports in an effort to determine the underlying Congressional intent and purpose in the 1952 Act
>
> . . . .
>
> There is no indication in the committee reports that the language change [from residence in the United States to physical presence in the United States] was for purposes other than the elimination of troublesome problems involving "constructive" residence which had theretofore been encountered, and to make it clear that "residence" meant "physical presence" and nothing else.

Matter of V at 560.

The record contains the following documents pertaining to Mr. Carlos's physical presence in the U.S. prior to April of 1964:

1955: A W2 statement from Tri-Delta Amusement Co. indicating that the Mr. [redacted] earned $19.50, and listing

Mr. [redacted] residence as an address in Nogales, Mexico;

Two pay stubs from Phillips Construction Company indicating that Mr [redacted] earned two weeks of pay in the amount of $23.46 and $34.33. The pay stubs contain no address or residence information;

A copy of Mr. [redacted] registration for the Selective Service, dated October 7, 1955.

1956 - 1958: A Social Security Administration (SSA) printout indicating that Mr [redacted] earned $14.50 in 1956, $15.00 in 1957, and $8.10 in 1958. The printout contains no address or residence information for Mr. [redacted]

1959-1960: An SSA printout indicating that Mr. [redacted] earned $0 during the years 1959 and 1960, and containing no address or residence information.

1961: An SSA printout indicting that Mr. [redacted] earned $18.50. The printout contained no address or residence information for Mr. [redacted]

A W2 statement from Nogales Sheet Metal & Roofing Works, indicating that Mr. [redacted] earned $18.50, and listing an address in Nogales, Arizona.

1962: An SSA printout indicating that Mr. [redacted] earned $16.00, and containing no address or residence information for Mr. Carlos.

1963: An SSA printout indicating that Mr. [redacted] earned $32.00. The printout contained no address or residence information for Mr. [redacted]

A W2 statement from Nogales Sheet Metal & Roofing Works indicating that Mr. [redacted] earned $16.00 and listing an address in Nogales, Arizona.

1964: An SSA printout indicating that Mr. [redacted] earned $0 in 1964 and containing no address or residence information.

In addition to the above documents, counsel submitted the following affidavits pertaining to Mr. [redacted] physical presence in the United States:

A September 27, 1973, letter from the personnel department at Capin Mercantile Corporation stating that Mr. [redacted] began employment with the company on July 9, 1973;

A July 5, 1996, letter from [redacted] stating that Mr. [redacted] began employment with his family as a gardener in 1955, that he began working at Capin Mercantile Corporation in an unspecified year, and that he stopped working for the

company in 1973;

A July 12, 1997 letter from Mrs [redacted] indicating that Mr. [redacted] lived and worked in Arizona, and stating that their nine children were born in 1950, 1953, 1956, 1958, 1960, 1962, 1964, 1966 and 1968;

A July 12, 1996 letter from [redacted] indicating that Mr. [redacted] lived and worked in Arizona and that he rented a house to Mr. [redacted] in 1973.

The evidence submitted fails to establish that Mr. [redacted] was physically present in the United States for the time period required by section 301(a)(7) of the former Act. Only two of the employment documents (W2 statements for 1961 and 1963) indicate that Mr [redacted] had an address in the United States. The remainder of the employment documents either contained no information regarding Mr. [redacted] address or residence, or they contained information indicating that Mr. [redacted] resided in Mexico. The Mexican address information listed on Mr. [redacted] 1955, W2 statement additionally diminishes any probative weight that can be given to Mr. [redacted] 1955, Selective Service certification. Moreover, the record contains no employment history to indicate that Mr. [redacted] was present or residing in the U.S. in 1959, 1960 or 1964, and the minimal amounts earned during the remaining years do not indicate that Mr. [redacted] was gainfully employed in the U.S. or that he resided in the U.S. during those time periods.

In addition, the affidavits submitted by counsel are not found to be probative of Mr. [redacted] physical presence in the United States. The two affidavits submitted by the Capin Corporation contain material discrepancies pertaining to the years that Mr. [redacted] allegedly worked there. For example, one affidavit states that Mr. [redacted] began working for the company in sometime after 1955 and stopped working there in 1973. The other affidavit states that Mr. [redacted] began working for the company in 1973 and gives no indication of him ending his employment with the company. It is additionally noted that none of the employment documentation submitted by counsel reflects employment by the Capin Corporation.

Furthermore, the evidence in the record indicates that all of Mr. and Mrs. [redacted] nine children were born and raised in Mexico between the years 1950 and 1968. Moreover, the affidavits from Mr. [redacted] and Mrs. [redacted] provide no corroborative information or evidence and they lack detail regarding the dates and places that Mr. [redacted] resided in the United States.

8 C.F.R. section 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed

citizenship by a preponderance of the evidence. *See also* § 341 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1452. Given the material discrepancies in the record and the absence of supportive evidence to establish that Mr. [redacted] was physically present in the United States for the requisite period of time, the applicant has not met the burden of establishing that his father was physically present in the United States a total of ten years, five of which were after the age of 14. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.